IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8145 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER VADODARA MUNICIPAL CORPORATION - Petitioner(s)
Versus
DILIPBHAI SOMABHAI VAGHARI - Respondent(s)

==========

Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/07/2007

ORAL JUDGMENT

1. Shri Nilesh A. Pandya, learned counsel for the petitioner; Shri A.K. Clerk, learned counsel for

the respondent under the authority of Shri R.D. Raval.

2. Municipal Corporation of Vadodara, being aggrieved by the award dated 21.2.2000 passed by the Presiding Officer, Labour Court, Vadodara in Reference LCB No. 277/93 is before this Court with a submission that the learned court below erred in not appreciating that before the date of removal of the respondent from the services, within 12 calendar months preceding the date of removal, the workman did not complete 240 days and under the circumstances, the removal would not amount to illegal termination or illegal retrenchment.

3. Shri Clerk, learned counsel for the respondent, on the other hand, referring to the findings recorded by the learned Labour Court in para-7 of its award, submitted that the establishment failed in proving that the workman did not work for 240 days. He submits that if the petitioner failed in proving that the respondent did not work for 240 days or more, then, reinstatement was the only consequence to the Reference.

4. It is to be seen from the records that the learned Labour Court in para-6 of its award has observed that the Corporation had come out with the case that the workman did not complete 240 days in 12 calendar months preceding the date of retrenchment. The learned Labour Court also observed that in support of the submission, the establishment had filed exh. 12/1. If that was so, finding of the learned Labour Court that the establishment failed in filing any document to prove that the workman did not work for 240 days or more would become a finding contrary to the records.

5. In the matter of *Range Forest Officer v. S.T. Hadimani [JT 2002 [2] SC 238*, the Apex Court had observed that if it is the claim of the workman that he had worked for 240 days which was denied by the management, it would be for the workman to lead evidence to show that he had in fact, worked for 240 days in the year preceding his termination. The Apex Court also held that filing of an affidavit is only his own statement in his favour and that affidavit cannot be

regarded as sufficient evidence for any court or Tribunal to come to the conclusion that a workman had, in fact, worked for more than 240 days in the year preceding his termination.

6. Once legal position is accepted that the burden is upon the workman to prove that he had worked for 240 days or more, the court could not shift the burden upon the establishment and hold that in absence of the negative proof from the side of the establishment, a positive relief should be granted to the workman.

7. Taking into consideration the totality of the circumstances and the legal position as explained by the Apex Court, I hold that the learned Labour Court was absolutely unjustified in casting burden upon the establishment to prove that the workman did not work for 240 or more days. I hereby set aside the award and remand the matter back to the Labour Court with a direction to re-decide the matter in accordance with law as explained by the Apex Court in the above referred judgment.

8. The parties present before this Court shall

appear before the Labour Court on 21st August, 2007 and shall file copy of this order before the Labour Court enabling the court as to what it is required to do. After appearance of the parties, the learned court below shall allow the parties to lead evidence and if a written request is made, then, the court shall allow the parties to summon the records and also examine the record papers to prove or disprove the case of either party. It is further directed that the learned Labour Court shall dispose of the matter finally within a period of six months from the date of appearance of the parties. If required, the Labour Court may proceed on day to day basis, but shall, in any case, observe the time limit.

9. The petition is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

pirzada/-